



RIGHTS STUFF

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Local Human Rights Commission Can't Have Rules At Odds With State Laws

Genell Soulier worked for Nachhatar in Ft. Wayne, Indiana. In October of 2006, she filed a complaint with the Ft. Wayne Metropolitan Human Relations Commission (FWMHRC), alleging sexual harassment on the part of Nachhatar's management and employees. In December of 2006, she added an additional charge to her complaint, saying that Nachhatar had retaliated against her for filing her October complaint by refusing to let her return to work after her maternity leave.

The Ft. Wayne MHRC investigated her allegations and concluded that there was "substantial evidence" to support a finding of probable cause to conclude "that the case merit[ed] further efforts by the Commission."

In March of 2008, Nachhatar, following the rules of the Ft. Wayne MHRC, elected in writing to proceed before a court instead of the Commission. In December 2008, the Commission dismissed Soulier's case from its docket without prejudice. Seven days later, it filed a lawsuit against Nachhatar for employment discrimination and retaliation. It requested a jury trial.

Nachhatar moved to strike the demand for a jury, noting that the Indiana Civil Rights Law says that "A civil action filed under this sec-

tion must be tried by the court without benefit of a jury." The Commission argued in turn that it had a right to a jury trial under the Seventh Amendment of the U.S. Constitution. The Trial Court agreed with Nachhatar and the Commission appealed.

The Commission argued that the Trial Court erred by striking its demand for a jury trial and said there had not been a valid election to move the case from the jurisdiction of the Commission to the Court. It said that Soulier's written agreement to the court election was required. Nachhatar said it followed the Commission's rules when it made the election and as noted earlier, state law prohibits jury trials in these kinds of cases.

State law required that both parties agree to have the case transferred from a commission to a court, but that's not what the Ft. Wayne rules required. The Commission argued that it had the authority under Indiana's home rule law to have different election requirements, but the Court disagreed. The Court said that "Any [local] regulation that conflicts with statutory law is wholly invalid." Because the Commission's election rule was not consistent with the state's rule, the Court of Appeals remanded the case with instructions to dismiss. ♦

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Justice Department And Hilton Sign Consent Decree

The United States Department of Justice sued Hilton Worldwide, alleging the hotel chain did not make sure its new hotels complied with the Americans with Disabilities Act. The DOJ also alleged that Hilton did not provide guests with disabilities the same opportunity to reserve accessible guestrooms on-line or on the telephone as it provided guests without disabilities.

In support of its lawsuit, the DOJ said that it had inspected 13 Hilton hotels and found the following violations of the ADA:

- Hilton did not build new hotels in compliance with the ADA's accessibility requirements;
- Hilton did not include accurate information about its accessible rooms and amenities in its reservations

system;

- Hilton did not provide the required number of accessible sleeping rooms and roll-in showers;
- Hilton did not properly equip accessible rooms for guests who are deaf or hard of hearing;
- Hilton did not provide accessible signage; and
- Hilton failed to comply with ADA's rules for protruding objects.

Hilton denied all of the allegations, but recently entered into a consent decree with the government to address the concerns the lawsuit raised. Pursuant to the consent decree, Hilton will do the following:

- Survey all of the areas of its covered hotels that are open to the public using an ADA inspector approved by the DOJ.

- Disperse its accessible rooms among the various classes of sleeping accommodations.
- Make sure that each of the covered hotels has accessible rooms that comply with the ADA.
- Provide accommodations for guests with hearing impairments, including visual alarms and visual notifications for incoming telephone calls and door knocks.
- Make sure its parking lots comply with the ADA.
- Create a training video to educate hotel owners on how to comply with the survey requirements.
- Provide the DOJ with documentary and photographic evidence that it has complied with the ADA. ♦

Starbucks Sued For Disability Discrimination

Elsa Sallard is a dwarf (some people prefer the term little person) who was hired by Starbucks in El Paso, Texas, to work as a barista. She said Starbucks trained her for three days. She was not tall enough to do her job without an accommodation, so she asked for a stool or stepladder. That same day, she was fired, allegedly for posing a potential danger to customers and employees.

She filed a complaint of disability discrimination with the U.S. Equal Employment Opportunity Commission. The EEOC tried to settle the case but apparently was unsuccessful, and thus the case is now in litigation.

Dwarfism may be a disability as that term is defined by the Americans with Disabilities Act. The ADA requires employers to provide reasonable accom-

modations to an employee with a disability who is otherwise qualified to do the job. In many work places, providing a short person a stool or stepladder would be a reasonable accommodation. Whether it would be in a Starbucks, which is often crowded and busy, with employees carrying hot liquids, is a case for the courts to decide. ♦



Ledbetter Act Does Not Apply To Promotions

Emmanuel Noel is a black Haitian national who began working for Boeing in 1990 as a sheet metal assembler. He was hired at Labor Grade 5 and repaired Chinook 47 aircraft.

Boeing occasionally offers its employees the chance to work at offsite locations. Because of extra pay and other benefits, these are coveted positions. Boeing considers seniority, skills and abilities when making these assignments.

Noel had his first offsite assignment in 1991, working in Louisiana for six months. His next offsite assignment was in 2002, working in Texas. This assignment resulted in his labor grade rising to 8 and a \$57 per diem. At about the same time, two white men were assigned to work at the same spot. They were promoted from labor grade 7 to labor grade 11, while Noel stayed at 8. He filed a discrimination complaint with the company in September 2003, and a formal complaint with the Equal Employment Opportunity Commission in March 2005.

The District Court found his complaint to be time-barred. He had 300 days from the date of the alleged discrimination to file a complaint with the EEOC but didn't file it for about 18 months. He appealed, and lost.

Noel argued that the Lilly Ledbetter Fair Pay Act gave him additional time to file his complaint. The Fair Pay Act was passed by Congress in 2009 in response to the Supreme Court's decision in Ledbetter v. Goodyear Tire and Rubber Co., Inc., 550 US 618 (2007). Ledbetter sued when she learned that she had been paid less than similarly-situated men for years; this affected not only her pay while working for Goodyear but also her pension once she retired. The Supreme Court ruled that her complaint was outside of the statute of limitations because the alleged discrimination - the decision to pay her less - had happened years ago, even though she only recently learned about it. The Ledbetter Fair Pay Act says that each time the employer pays the employee less because of illegal

discrimination, each time it issues a paycheck, the clock starts running again.

Noel said that because he didn't get the promotions and the accompanying raises that the white men did, he, too, had been discriminated against in compensation, and the clock started running again each time he was paid less than they were. The Court of Appeals held that a failure to promote is not the same as failure to pay fair wages. Unlike Ledbetter, who didn't know for years what her male co-workers were getting paid, Noel knew at the time that it happened that he did not get the promotions that the white men did. Nothing kept him from filing his complaint in a more timely manner.

The case is Noel v. The Boeing Company, 622 F. 3d 266 (Third Cir. 2010). ♦

Obama Administration Extends Medicaid Protection To Same-Sex Couples

If an individual who owns a home has to receive long-term care under Medicaid, the state may impose a lien, or take possession, of the home to pay for Medicaid expenses. But if the individual has a spouse who still lives in the home, Medicaid may not do that.

The Obama administration recently issued a policy guidance to allow states to offer same-sex couples the same protections afforded to straight couples. Under the new guidance, states have the option to allow healthy partners in same-sex-relationships to

keep their homes while their partners are receiving support for long-term care under Medicaid, such as care in a nursing home. ♦



Fair Employment Act of 2011 Would Ban Discrimination Against People Without Jobs

In March, Congressman Hank Johnson (D-GA) introduced a bill that would add unemployed people to the list of people protected from discrimination by federal fair employment laws.

The bill is called the Fair Employment Act of 2011 and was co-sponsored by Congressman Jesse Jackson, Jr. (D-Ill.). If passed, it would become illegal for employers to refuse to hire a person because of his or her employment status. Congressman Johnson said he wrote the bill because he was troubled by the phenomenon of job ads that say applicants "must be currently employed." He said that he felt it was unfair to discriminate against people who lost jobs due to no fault of their own, people who "were just victims of corporate downsizing during a tough economy. And then to be penalized for having

that status is very unfair. It reminded me of the days when blacks were told not to apply for jobs, when job ads said 'No women allowed.' This really affected me, and I decided that there was something that we can do."

Employers and staffing firms usually will deny that they discriminate based on employment status. But if you search the web, you can find ads that require that applicants already have a job. For example, Grobard and Associates, a staffing firm, recently posted a notice for a "currently employed medical salesperson" on Monster.com. A spokesperson from the firm denied that Grobard discriminated against people without jobs, saying that "Ninety percent of the people we place are unemployed. This one client

that we have requires very, very current technical experience, so that is the only reason candidates have to be currently employed for that one." Of course, someone currently working might not have that "very, very current technical experience," and someone who is unemployed might have that experience.

The EEOC is looking into whether discrimination on the basis of employment status might be a violation of current fair employment laws.

(Article based on New Bill Would Ban Discrimination Against the Unemployed, by Laura Bassett, Huffington-post.com, 3/16/2011.) ♦

Veterans Administration Says Transgender Vets Are Eligible For Non-Surgical Treatment at VA Facilities

The Veterans Health Administration told its hospitals and clinics in June 2011 that transgender veterans are eligible for hormone treatment, care before and after gender reassignment surgery and mental health counseling as part of their regular benefits. But the facilities will not be allowed to perform genital or breast surgeries on veterans who are in the process of changing genders.

The agency said that transgender patients are entitled to routine health care that takes their special needs into account. They are entitled to transgender-specific treatments such as hormone therapy and "non-surgical, supportive care for complications of sex-reassignment surgery."

The directive also told its facilities to refer to transgender vet-

erans in conversation and on medical records by the gender pronoun they prefer, whether or not they have had surgery. The directive applies not only to transgender veterans but also to intersex veterans (people who appear to be one gender but whose chromosomes indicate they are another gender). Transgender activists say that before this directive, each VA facility made its own policy. ♦